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EXAMINER
MANAHAN, T

ART UNIT	PAPER NUMBER
3732	

DATE MAILED: 07/23/98

Please find below a communication from the EXAMINER in charge of this application.

Commissioner of Patents

Office Action Summary	Application No. 08/997,879	Applicant(s) Waters
	Examiner Todd E. Manahan	Group Art Unit 3732

Responsive to communication(s) filed on _____.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-37 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) 1-25 and 28-32 is/are allowed.

Claim(s) 26, 27, and 33-37 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26, 34 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlisi (U.S. Patent No. 5,048,465) in view of Hohenstein (U.S. Patent No. 4,574,735).

Carlisi discloses a litter box comprising a pan-shaped housing defining an upwardly open litter chamber 14; a waste receptacle 30 located outside the litter chamber; a comb 54 disposed in the litter chamber; and means for driving the comb through the litter chamber. Carlisi discloses the claimed invention except for the waste level sensor for sensing when waste has reached a predetermined level in the waste receptacle. Hohenstein discloses a litter box in which includes a sensor 122 for sensing when the waste receptacle 90 is full, i.e. waste has reached a predetermined level in the receptacle, and triggering a light, i.e. an alarm, to indicate that the receptacle needs emptying (see col. 6, lines 37-41). It would have been obvious to one skilled in the art to provide the litter box of Carlisi with a waste level sensor and alarm in view of Hohenstein in order to make the pet owner aware that the waste receptacle needs to be emptied.

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Claims 27 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlisi in view of Strickland (U.S. Patent No. 4,844,011).

Carlisi discloses the claimed invention except for the mode selector means for selecting between at least manual operation mode and automatic operation mode. Strickland discloses a litter box in which mode selector means 54 are provided for selecting between manual actuation of the device or automatic actuation. It would have been obvious to one skilled in the art to provide the litter box of Carlisi with mode selector means in view of Strickland in order to permit the pet owner to activate the device either manually or automatically.

Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Arbogast (U.S. Patent No. 5,259,340) in view of Carlisi.

Arbogast discloses the invention essentially as claimed except for the litter separator being a mesh basket instead of a comb. Note that the storage and discharge positions are shown in figures 3-6. Carlisi discloses a litter box in which the litter separator means is a comb. It would have been obvious to one skilled in the art to use a comb as the separator means instead of the basket in the litter box of Arbogast in view of Carlisi as such would merely constitute substitution of functionally equivalent litter separator means.

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Claims 36 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Carlii.

Carlii discloses the claimed invention except for the comb being positioned above the fill level in the storage position. It would have been an obvious matter of design choice to position the comb above the fill level in the storage position, since applicant has not disclosed that positioning the comb above the fill level in the storage position solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the comb positioned above the fill level in the storage position.

Allowable Subject Matter

Claims 1-25, 28-32 are allowed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Zamoyski (U.S. Patent No. 5,267,530) discloses a litter box wherein the separator is disposed above the fill level of the box.

Pierson, Jr. (U.S. Patent No. 4,846,104) discloses a litter box that can be operated either automatically or manually.

McDaniel (U.S. Patent No. 5,226,388) discloses a litter box with attached waste receptacle and having a comb discharge position above the fill level of the litter chamber.

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Brogan (Canadian Patent No. 2,069,517) discloses a litter system wherein the waste receptacle is made of biodegradable material.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Todd E. Manahan whose telephone number is (703) 308-2695.



Todd E. Manahan
Primary Examiner
Art Unit 3732

T. E. Manahan
July 16, 1998